

CONSIDERATION OF THE IMPLEMENTATION OF THE OBJECTIVE OF THE CONVENTION

13.1 Chile presented CCAMLR-XIX/BG/43, explaining the analogy between the subject and the operation of the Antarctic Treaty System, and detailing the relationship between the subject of the document and the efforts to eradicate IUU fishing. The document indicates that in order to meet the challenge of IUU fishing, CCAMLR needs to strengthen its organisational structure. The document also examines the links between CCAMLR's objectives and the ecosystem approach. CCAMLR-XIX/BG/43 follows on with an interpretation of Article II of the Convention, as it was formulated by the Conference which adopted the Convention, and which accentuated the value of the precautionary principle. The document mentions that this precautionary principle has been incorporated into recent regional fisheries agreements, and highlights plans for an international conference on responsible fishing with an ecosystem approach, which will take place in Iceland. The document also emphasises science as a paradigm for CCAMLR, and the importance of directing its actions with regard to cooperation with adjacent areas, towards the adoption of an overall international agreement for the conservation of the oceans.

13.2 Members responded to this presentation with general appreciation, particularly for focusing the Commission's attention to its objectives.

13.3 Argentina stated:

'The Delegation of Argentina expressed its appreciation for the document CCAMLR-XIX/BG/43 presented by Chile, which it found of great interest. It identified important points of view in the document, many of which Argentina agrees with. Argentina also made reference to the document CCAMLR-XVIII/BG/50 Rev. 1 presented by Chile last year, which also contained important views on the interaction between CCAMLR and other international organisations, but which, at the same time, developed certain concepts which caused some concern.

Argentina expressed that the attempt to find a solution based on the harmonisation of different regimes coexisting within the Convention would allow one to infer that there is indeed the possibility of confronting competences, which is not actually the case. The Convention and the Statement by the Chairman provide for adequate demarcation of competence. There are both the multilateral regime of the Convention, and the possibility of regimes of exceptional nature based on the Statement by the Chairman. The latter enables those States with islands within the Convention Area over which the existence of a State sovereignty is recognised by all Contracting Parties to adopt their own national measures, provided that the mechanism referred to in the Statement by the Chairman is applied.

A different situation arises in the case of unilateral action, because even well-intentioned and intensive efforts to reach a state of harmony on an auxiliary basis would lead to a dead end. This is because in such a context, the very essence of unilateral action is incompatible with international law.

Moreover, no other conflicts could arise if no action were to be taken since all Contracting Parties are clearly committed to act in accordance with the purposes and principles of the Convention. At this stage, the duty to cooperate and to act in good faith show us the way forward and, by means of the work of the Commission, preclude the existence of 'lacunae' as well.

Probably the time has come to give further consideration to other concepts which might be useful, such as compatibility, coherence, convergence and uniformity. It is indeed a complex scenario. Let us, for example, recall that at the time the Straddling Stocks Agreement was being negotiated, both the concepts of compatibility and of coherence had been thoroughly developed, however when the text was adopted, only the crucial concept of compatibility pervaded.

In relation to the sources of international law referred to in the Chilean document, the Argentine Delegation wishes to point out that in its view only international treaties, custom and general principles of law are to be considered. International jurisprudence and state practice should, in this context, be set aside. Subsequent state practice might well be used in treaty interpretation. However it should not be used in connection with amendment or derogation of treaties. This was the choice made by the Vienna 1968–69 Conference on the Law of Treaties, which in that respect decided to set aside the International Law Commission's proposal, according to which state practice could be used to interpret and modify a treaty. Accordingly, the decision taken by the International Court of Justice in the *Gabcíkovo-Nagymaros* case, is consistent with the Vienna Convention on the Law of Treaties. That means that treaties do not consist of mere state practice but are the result of a complex process of conclusion. The Convention and the Statement by the Chairman have the status of a treaty.

With regard to CCAMLR-XIX/BG/43, the Argentine Delegation considers that it was fortunate in that it also deals with certain concerns which sometimes seem not to have been given enough attention in the debates. One of those concerns is related to a certain trend allowing the Commission to extend its competence beyond the Convention Area. The document of Chile suggests to reflect prudently about the possibility to envisage the conclusion of an overall scheme encompassing all problems related to the conservation of the oceans. The Argentine Delegation certainly shares those views.'

13.4 Australia noted that the Commission has much to contribute to the proposed International Plan of Action. The CDS is seen by others as a benchmark action in addressing IUU fishing.

13.5 With respect to cooperation within the Antarctic Treaty System, Australia believed that interaction is important, as shown by the very effective and constructive participation of the Chair of the Scientific Committee in CEP.

13.6 Australia stressed that it is important that all parts of the Antarctic Treaty System work together so that one arm of the System does not undermine another and that proposals requiring approval by two parts of the System do not get delayed indefinitely in a loop of referral from one forum to another.

13.7 New Zealand agreed with Chile that there needed to be opportunity for considering CCAMLR's objectives and effectiveness. Also it had recalled that CCAMLR's main objective was 'conservation' based on the application of both the precautionary principle and the 'ecosystem approach'.

13.8 The UK noted the synergy between the comments of Chile and the proposals of the European Community concerning operating arrangements for the work of SCOI. Such proposals were regarded by the UK as worthy of further consideration, but it noted that in the area of preparing conservation measures, it was not appropriate for the Commission to delegate responsibility for such an important issue.

13.9 The UK indicated that the feedback received from other fora has indicated that CCAMLR continues to lead the field with its approaches to IUU fishing and to ecosystem management. The UK stressed that it was important that CCAMLR should continue to adopt innovative approaches to its work.

13.10 Japan shared the concerns expressed by other Members concerning IUU fishing and was working hard with the implementation of agreed counter-measures. Although Japan is not a country adjacent to the Convention Area, its concerns relate not only to fishing but also to a responsible approach to conservation.

13.11 South Africa observed that it was important that such a body as CCAMLR continues to reflect on its objectives and find ways to meet the new challenges affecting it. It is important to be prepared to address not only the current issues but also those which are likely to arise in the future.

13.12 The Commission agreed that specific reflection on the objectives of the Convention continues to be an important requisite of each annual meeting. As a result, this item will continue to be on the agenda for next year's meeting.